

Supreme Court to consider legality of gas-tax payments to tribes

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Nisqually Tribe gas station under construction at 11741 Pacific Highway on Wednesday, Mar. 27, 2013. (Lui Kit Wong/Staff photographer)LUI KIT WONG — The News Tribune
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The state's highest court will consider a challenge to more than \$30 million a year in gas-tax proceeds state government pays to Indian tribes.

State Supreme Court justices will hear arguments Tuesday in the long-running lawsuit by nontribal gas station owners challenging gas-tax compacts negotiated over the past decade between the state and tribes.

"Huge amounts of money are going out and we don't know if they are being used for the alleged purpose the compacts were supposed to accomplish," said Phil Talmadge, a former justice on the court and attorney for the gas station owners.

At the heart of the case is the definition of a refund. The state constitution restricts gas-tax revenue to use on highways and streets, but makes an exception for refunds to taxpayers.

The gas-station owners argue that tribes can't be eligible for refunds of gas tax because they neither pay the taxes directly, as suppliers do, nor bear the ultimate burden of the tax, as drivers do. Nor have tribes overpaid or paid the taxes in error, the stations say.

Limiting refunds by those standards threatens to invalidate a host of other tax refunds the Legislature has created, Assistant Attorney General Rene Tomisser said.

Tomisser said companies that get refunds could presumably pass the cost of fuel on to customers, as tribes do. Refunds are available to people and companies who buy fuel for nonhighway uses such as construction and farming, among others.

Compacts between the state and tribes provide for refunds that in most cases are equivalent to 75 percent of the tax on tribal-sold gas.

In exchange, tribes have agreed not to get into the business of blending or wholesaling automotive fuel. Such a move would make them directly responsible for tax collection and could trigger their immunity from taxes, the very problem the Legislature aimed to avoid by imposing taxes before the gas ever reaches the pump.

“The agreements are working,” Tomisser said. They are protecting the highway fund “by providing incentives to the tribes not to become suppliers of fuel.”

“In the Legislature’s view, it’s a risk that’s worth spending some money to avoid,” Tomisser said.

While Talmadge said tribes couldn’t afford to take on the financial burden and risk of blending fuel, tribes themselves say they were poised to get into that business.

The lawsuit “threatens the ability of tribal governments to fund important transportation projects and services on and near their reservations,” attorneys for tribes wrote in a legal brief.

Tribes are obligated to spend the gas-tax money on transportation and public safety, including roads, bridges, boat ramps, transit and policing.

They are subject to third-party audits. But details of how the money is spent are shielded from public view.

One recent project funded at least partly by tribal gas-tax payments is a link between Pacific Highway and 12th Street near the Puyallup Tribe’s Emerald Queen Hotel and Casino in Fife.

The new section of 59th Avenue was finished in 2012 at a cost of \$2.3 million, tribal spokesman John Weymer said. But no details were available on how much of that money came from gas taxes.

Talmadge said if the Legislature wants to spend money on tribal road projects, it should specify the projects in budgets so people could see how the money is spent.

Gas station owners suspect the state payments are used today to undercut competition from their stations, he said.

“You can go to various tribal gas stations and see that in many cases their prices are 20 and 30 cents below the same gasoline being sold by nontribal gas stations,” Talmadge said.

Tribes deny they are selling at lower prices.

“On the contrary, many nontribal retailers — especially low-margin ‘hypermarketers’ such as Costco, Fred Meyer, and Safeway — sell at prices below those of the tribal stations,” according to the legal brief written by John Sledd and other attorneys for tribes.

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